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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,845	01/08/2004	Michael O'Banion	0275A-000505/USB	6050

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HARNESSE, DICKEY & PIERCE, P.L.C.
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EXAMINER

PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/753,845

Applicant(s)

O'BANION ET AL.

Examiner

Jason Prone

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3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-6, 14-42, 45-68, 71-76, 78-80, 82-93 and 95-109 is/are pending in the application.
- 4a) Of the above claim(s) 3-6, 14-42, 45-68, 71-75, 82-89 and 95-109 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 76, 78-80 and 90-93 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 100-109 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 100-104 are withdrawn because of claim 100 including the limitation "a release mechanism operable to initiate movement of the engaging member" and because claim 100 does not include a "biasing member" limitation as set forth in claims 76 and 90. Claims 76 and 90 disclose that it is the biasing member that initiates the movement of the engaging member. Therefore, claims 76 and 90 have 2-way distinction from claim 100. Claims 105-109 are withdrawn because of claim 105 including the limitation "determine a change in depth" while claims 76 and 90 disclose "determine a human extremity in proximity...". Also, claim 105 does not include a "biasing member" limitation as set forth in claims 76 and 90. Therefore, claims 76 and 90 have 2-way distinction from claim 105.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 100-109 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Specification

2. The amendment filed 18 October 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no

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amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The original specification paragraph [0186] discloses "Transmitter 214...is operable to monitor the depth (thickness) of the workpiece 218 that is being fed into saw blade 208" and "if depth sensor 214 detects a sudden change". First, the original specification discloses 214 monitors the depth and does not support measuring the depth. Monitoring and measuring are not equivalent functions. Therefore all mentions of the word "measuring" are considered new matter and should be replaced with the supported term "monitoring". Second, the newly added phrase "the depth sensor 214 may be configured to measure a depth of an item just prior to contacting the blade 208" is not supported in the original disclosure. The original specification only provides support for a workpiece being fed into the saw. Therefore, any mention of the depth of the workpiece being monitor before the workpiece is fed into the saw is new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

3. Claims 76, 78-80, and 90-93 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With regards to claims 76 and 90, the phrase "a depth sensor that measures a depth of an item being fed into/proximate to the active portion of the power tool and is

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adapted to determine a human extremity in proximity to the active portion of the power tool based on said measurement" is not correct and features new matter. The phrases "a depth sensor that measures a depth" and "is adapted to determine a human extremity in proximity to the active portion of the power tool based on said measurement" are new matter. A new matter rejection should have been made at the time the term "measure" was first added. There is not support for a depth sensor being able to perform a measuring function. There is only support for a depth sensor that monitors the depth of a workpiece. Also, there is only support for the depth sensor to detect a sudden change in depth to trigger the stopping mechanism and there is no support for a measurement to trigger the stop mechanism.

With regards to claims 76 and 90, the phrase "a depth sensor...is adapted to determine a human extremity in proximity to the active portion of the power tool based on said measurement" is not correct. The depth sensor detects a sudden depth change only and triggers a stop mechanism regardless of what caused the depth change. For instant, a piece of wood could have 2 portions with different depth that would create a sudden depth change and the stop mechanism would be triggered but there is no human extremity near the active portion. Also, for example, the users hand is the exact same depth as the work piece. The user cuts through the wood and on into his/her hand. The depth sensor would not detect a human extremity near the blade because the depth did not change. The language of withdrawn claim 105 correctly states the function of the depth sensor. A human extremity is just one example of a situation that could cause a sudden depth change.

With regards, to claim 90, the phrase "a depth sensor that measures a depth of an item proximate to the active portion" is new matter. The original specification paragraph [0186] discloses "Transmitter 214...is operable to monitor the depth (thickness) of the workpiece 218 that is being fed into saw blade 208". The original specification only provides support for a workpiece being fed into the saw.

Response to Arguments

4. Applicant's arguments, with respect to the art rejection(s) of claim(s) 76, 78-80, and 90-93 under Gass (2002/0170400) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, newly added limitations (and 1 previously added limitation) created a new matter rejection and previous 112 issues have not been resolved.

5. Assuming these issues are resolved and so the case can be moved forward quickly, it is also recommended that the withdrawn claims dependant off of claims 76 and 90 be reviewed for new matter situations. For example there appears to be no support in the specification for a combination apparatus with a depth sensor and a light gate.

Allowable Subject Matter

6. Claims 76 and 90 (with all dependant claims) would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

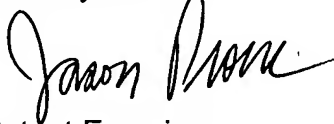
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:00-4:30, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 3, 2007



Patent Examiner
Jason Prone
Art Unit 3724
T.C. 3700